Majlis Perbandaran Seberang Perai v Tenaga Nasional Bhd

FEDERAL COURT (PUTRAJAYA) — APPEAL NO 02–21–2003(W)
HAIDAR CJ (MALAYA), SITI NORMA YAAKOB AND PS GILL FCJJ
16 SEPTEMBER 2004

Local Government — Rates — Annual value — Determination of annual value — Whether an article includes electricity — Whether Electricity Supply (Amendment) Act alters position of valuation of power — Local Government Act 1976 s 2

Words and phrases — Annual value — Local Government Act 1976 s 2

On 11 November 1995, the appellant issued a new valuation list on a revaluation of the respondent's power station known as Stesen Jana Eletrik Seberang Perai ('SJSP') for the period effective from 1 January 1996 and that on 3 October 1996 the appellant rejected the respondent's objection at the hearing before its Rating Appeal Committee in respect of the appellant's valuation taking into consideration, inter alia, the enhanced value of the machinery used in the generation of electricity. The respondent contended that such machinery ought to be exempted from valuation and consequently, rates, pursuant to the exemption provision in s 2 of the Local Government Act 1976 ('the LGA'). The High Court delivered its judgment to the respondent and hence this application for leave to appeal.

This court had allowed the application for leave to appeal on the following questions of law: (a) whether 'electricity' is an article for the purpose of determining the annual value of a power station in accordance with the definition of 'annual value' in s 2 of the LGA; (b) whether the machinery referred to in the proviso at (b) to the definition of 'annual value' in s 2 of the LGA refers to machinery that is not integrated with the 'land' and/or 'building' as defined in s 2 of the LGA; and (c) whether the generating plant and machinery present in a power station are structures within the definition of 'building' in s 2 of the LGA and accordingly, are to be taken into account in determining the annual value of the said power station.

Held, dismissing the appeal with cost:

(1) In determining whether 'electricity' is an article consideration was given to the definition of 'annual value' as in s 2 of the LGA. The word article is not per se defined in the LGA but the said word is in the definition of 'annual value' (see paras 5–6).

(2) Taking into consideration the LGA and the relevant date of revaluation of the SJSP for the period 1 January 1990, as well as the definition of 'electricity' as an article under the Electricity Supply Act 1990, and s 3

of the Factories and Machinery Act 1967 which states that 'article' means any solid, liquid or gas or any combination thereof, and also includes electricity, 'article' referred to in the proviso (b) to the definition of 'annual value' of the LGA can and should be construed as including 'electricity' (see paras 9–11).

(3) The definition of electricity as per the Electricity Supply (Amendment) Act 2001 that came into force on 2 January 2002 had never changed the definition of electricity as the amendment had not removed the word article since the definition of electricity as an article remains intact in the Factories and Machinery Act 1967 thus electricity was still considered as an article (see paras 14–15).

(4) Based on the facts of the case, the Factories and Machinery Act 1967 is the main governing legislation as there is machinery used in the operation of a power station and this power station for all intents and purposes can be considered as a factory that is used for the production of an article which is in this case is the electricity (see para 18).

(5) In determining as to whether the machinery used was a building as defined in s 2 of the LGA, the court concluded that machinery referred to in proviso (b) refers to 'article production machinery' which is not integrated to the land/building and includes the machinery used to produce the article electricity. Furthermore, as this machinery may be removed and is not in any way used for support and does not fall within the definition of structure, thus the machinery does not form part of the building and therefore is not within the ambit of the definition of building found in s 2 of the LGA (see paras 27, 30–31).

(6) As both issue (a) and (b) was answered in the affirmative, hence if there is any machinery used for all or any of the purposes enumerated in items (i), (ii) and (iii) of s 2 of the LGA relating to any article (which includes electricity), the presence of such machinery which relates to 'article production machinery', the enhanced value of the holding from the presence of such 'article production machinery' which may include generating plant and machinery shall not be taken into account in estimating the annual value of the holding of the respondent (see para 26).

[Bahasa Malaysia summary

Pada 11 November 1995 perayu telah mengeluarkan satu senarai penilaian baru untuk menilai semula mesin penjana kuasa responden yang dikenali sebagai Stesen Jana Elektrik Seberang Perai ('SJSP') untuk tempoh dari 1 Januari 1996 dan pada 3 Oktober 1996 perayu telah menolak bantahan responden pada pendengaran di hadapan 'Rating Appeal Committee' berkenaan dengan peningkatan dalam nilai mesin-mesin yang digunakan

untuk menjana elektrik. Responden telah menegaskan yang mesin-mesin tersebut dikecualikan daripada sebarang penilaian serta tarif seperti yang diperuntukkan di bawah s 2 Akta Kerajaan Tempatan 1976 ('Akta tersebut'). Mahkamah Tinggi telah membuat keputusan untuk responden maka permohonan untuk kebenaran untuk merayu dikemukakan. Mahkamah telah membenarkan permohonan untuk membuat rayuan berdasarkan isu undang-undang berikut iaitu: (a) sama ada 'elektrik' adalah satu benda untuk menentukan nilai tahunan stesen penjana berdasarkan tafsiran 'nilai tahunan' seperti dalam s 2 Akta tersebut; (b) sama ada mesin-mesin yang dirujuk dalam proviso (b) merujuk kepada mesin-mesin yang tidak terlekat pada tanah dan/atau bangunan seperti yang didefinisikan dalam seksyen 2 Akta tersebut dan (c) mesin penjanaan serta mesin-mesin lain yang terdapat di stesen jana kuasa tersebut merupakan struktur seperti dalam definisi bangunan dalam s 2 Akta tersebut dan dengan itu patut diambil kira dalam penilaian tahunan tersebut.

Diputuskan, menolak rayuan dengan kos:

(1) Dalam menentukan sama ada 'elektrik' adalah satu benda atau tidak perhatian perlu diberikan kepada definisi 'nilai tahunan' seperti dalam s 2 Akta tersebut. Perkataan benda tidak dengan sendirinya ditafsirkan dalam Akta tersebut tetapi perkataan itu terdapat dalam tafsir nilai tahunan (lihat perenggan 5–6).

(2) Dalam mempertimbangkan Akta tersebut, serta tarikh penilaian SJSP dari 1 Januari 1990 dan juga definisi elektrik sebagai satu benda dalam Akta Bekalan Elektrik 1990 serta s 3 Akta Kilang dan Jentera 1967 yang mengatakan bahawa suatu benda bermaksud sesuatu pepejal, cecair atau gas atau sebarang kombinasi yang termasuk elektrik, 'benda' seperti yang dirujuk dalam proviso (b) definisi nilai tahunan dalam Akta tersebut sepatutnya turut termasuk 'elektrik' (lihat perenggan 9–11).

(3) Definisi elektrik seperti dalam Akta Bekalan Elektrik (Pindaan) 2001 telah menukar definisi elektrik memandangkan pindaan ini telah tidak lagi menggunakan perkataan benda, namun oleh sebab definisi elektrik sebagai satu benda masih lagi digunakan dalam Akta Kilang dan Jentera 1967 maka elektrik adalah dianggap sebagai benda (lihat perenggan 14–15).

(4) Berdasarkan fakta pada kes ini Akta Kilang dan Jentera 1967 adalah Akta utama yang terpakai memandangkan mesin-mesin yang diguna pakai dalam sebuah stesen janaan dan stesen jana kuasa ini untuk semua tujuan boleh dianggap sebagai satu kilang yang digunakan untuk mengeluarkan sesuatu benda di mana dalam kes ini adalah elektrik (lihat perenggan 18).

(5) Dalam menentukan sama ada mesin-mesin yang diguna pakai adalah termasuk dalam definisi bangunan seperti dalam s 2 Akta tersebut, mahkamah telah menyimpulkan yang mesin-mesin seperti yang dirujuk

oleh proviso (b) merujuk kepada 'mesin-mesin yang mengeluarkan sesuatu benda' yang tidak terlekat pada tanah ataupun sebarang bangunan lain dan termasuk mesin-mesin yang digunakan dalam pengeluaran benda elektrik tersebut. Selanjutnya oleh sebab mesin-mesin tersebut boleh dipindahkan dan tidak dalam apa cara jua pun digunakan untuk menyokong struktur lain maka ia tidak terjatuh dalam definisi bangunan seperti terkandung dalam s 2 Akta tersebut (lihat perenggan 27, 30–31).

(6) Oleh sebab jawapan untuk kedua-dua isu (a) dan (b) adalah ya maka jika terdapat sebarang mesin-mesin yang diguna pakai untuk tujuan seperti yang dinyatakan dalam (i), (ii) ataupun (iii) s 2 yang berkaitan dengan pengeluaran sebarang benda (iaitu elektrik) peningkatan nilai pegangan disebabkan oleh kehadiran mesin-mesin tersebut tidak patut diambil kira dalam anggaran nilai tahunan pegangan responden (lihat perenggan 26).]

Notes

For cases on annual value rates, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 136–137.

Cases referred to

AGL Victoria Pty Ltd v Lockwood & Ors [2003] VSC 453 (refd)
Canadian Wirevision Ltd v The Queen (1979) 2 FC 164 (refd)
Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Company Limited (1949) Vol 1 KB 385 (refd)
Kirby v Hunslet Union Assessment Committee (1906) AC 43 (refd)
Laing, Appellant; the Overseers of the Township of Bishopwearmouth and The Assessment Committee of Sunderland Union, Respondents (1878) Vol 3 LR (QBD) 299 (refd)
State of Electricity Commission of Victoria (SECV) v Federal Commissioner of Taxation Full Federal Court (refd)
The Tyne Boiler Works Company, Appellants v The Overseers of The Parish of Longbenton and the Assessment Committee of The Tynemouth Union, Respondents (1886)18 LR (QBD) 81 (refd)

Legislation referred to

Corporations Act [Aust] s 419(1)
Electricity Supply Act 1990 s 2
Electricity Supply (Amendment) Act 2001
Energy Commission Act 2001
Factories and Machinery Act 1967 s 3
Local Government Act 1976 ss 2, 130, 145(5)
Plant and Machinery (Valuation for Rating) Order 1927 [UK]

A Rating and Valuation Act 1925 [UK]

Appeal from: Originating Motion No S6 (S21)–25–30 of 1997 (High Court, Kuala Lumpur)

B *Tan Sri Zaki Azmi (Karen Wilfred with him) (Shahrizat Rashid & Lee) for the appellant .*
Dato' Dominic Puthucheary (Goh Peng Hong, Feroz Hussein and Abu Bakar bin Awang Ngah with him) (Bakar & Partners) for the respondent .

C **Haidar CJ (Malaya)** (delivering judgment of the court):

[1] On 27 October 2003, this court allowed the application for leave to appeal on the following questions of law:

(a) whether 'electricity' is an article for the purpose of determining the annual value of a power station in accordance with the definition of 'annual value' in s 2 of the Local Government Act 1976 ('the LGA');

D

(b) whether the machinery referred to in the proviso at (b) to the definition of 'annual value' in s 2 of the LGA refers to machinery that is not integrated with the 'land' and/or 'building' as defined in s 2 of the LGA; and

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(c) whether the generating plant and machinery present in a power station are structures within the definition of 'building' in s 2 of the LGA and accordingly, are to be taken into account in determining the annual value of the said power station.

F **[2]** This appeal against the judgment of the High Court directly to this court is by virtue of s 145(5) of the LGA which provides that either party may appeal but only on questions of law. Hence leave was granted by this court on the questions of law as framed above.

[3] The appeal to this court is in respect of such part of the judgment of
G the High Court that decides that:

(i) electricity is an article for the purposes of determining the annual value in accordance with the definition of 'annual value' in s 2 of the LGA;

(ii) all machinery for the production of electricity as an article at the
H Seberang Prai Power Station, including steam engines, boilers or other motive power belonging to such machinery, is to be excluded from the computation of the annual value; and

(iii) the Notice of Assessment dated 11 November 1995 and the decision of the Rating Appeal Committee given on 3 October 1996 be set aside.

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[4] According to the learned judge the parties agreed that the State Authority has determined the imposition of rates based upon the annual

value of the holdings. The issue whether the appellant ought to use the improved value of the holdings does not arise, (see s 130 of the LGA). **A**

QUESTION (A)

[5] In order to determine whether 'electricity' is an article we need to consider the definition of 'annual value' in s 2 of the LGA which reads: **B**

> 2 Interpretation
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> In this Act unless the context otherwise requires —
>
> 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes: **C**
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> Provided that —
>
> (a) …
>
> (b) in estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes — **D**
>
> (i) the making of any article or part of an article;
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> (ii) the altering, repairing, ornamenting or finishing of any article;
>
> (iii) the adapting for sale of any article; **E**
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> the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and for the purposes of this paragraph 'machinery' includes steam engines, boilers or other motive power belonging to such machinery;
>
> (c) … **F**
>
> (d) …

[6] The word 'article' is not defined in the LGA though the said word is in the definition of 'annual value' in the proviso thereof.

[7] The learned judge in considering briefly the Electricity Supply Act 1990 and the need for the amendment of the definition of 'electricity' by the Electricity Supply (Amendment) Act 2001 stated at p 9: **G**

> 16 Returning to the Electricity Supply Act 1990, the need for the 2001 amendment would in my view support the reasoning that prior to the amendment, the understanding is that electricity is an article, and that is the meaning that was understood and intended when the LGA was enacted. The amendment cannot be intended to or, have the effect of amending the meaning in the LGA when it was enacted and as applicable on the relevant date in this case. **H**

[8] What the learned judge stated above may not be that clear. However, it is not disputed that in this case the appellant on 11 November 1995 issued a New Valuation List on a revaluation of the respondent's power station known as Stesen Jana Eletrik Seberang Perai ('SJSP') for the period effective **I**

from 1 January 1996 and that on 3 October 1996 the appellant rejected the respondent's objection at the hearing before its Rating Appeal Committee in respect of the appellant's valuation taking into consideration, inter alia, the enhanced value of the machinery used in the generation of electricity. The respondent contended that such machinery ought to be exempted from valuation and consequently, rates, pursuant to the exemption provision in s 2 of the LGA.

[9] It is to be noted that the Electricity Supply (Amendment) Act 2001 came into force on 2 January 2002. It seems clear from the undisputed facts of this case, taking into consideration of the coming into force of the LGA (ie 1 January 1977), the Electricity Supply (Amendment) Act (ie 2 January 2002) and the relevant date of revaluation of the SJSP for the period 1 January 1990, the definition of 'electricity' as an article under the Electricity Supply Act 1990 remain intact and applicable. It reads:

> 'electricity', unless otherwise defined, is an article as provided for under section 3 of the Factories and Machinery Act 1967.

[10] Under s 3 of the Factories and Machinery Act 1967, 'article' means any solid, liquid or gas or any combination thereof, and also includes electricity.

[11] In the circumstances, on the facts of this case and the laws applicable at the material time, 'article' referred to in the proviso (b) to the definition of 'annual value' of the LGA can and should be construed as including 'electricity'.

[12] Quite apart from the reference to the relevant legislation on the meaning to be assigned to 'article' in s 2 of the LGA as set out above, the learned judge in ruling that 'electricity' is an article stated at p 10 of his judgment:

> The sole use of the holding by the Applicant is to generate, or in other words, to produce electricity, for sale. Electricity is a form of energy. It has no physical form to make it identifiable as an object or for that matter an article in the normal sense. But energy, or more specifically, electricity in this case, in the context of the business activity of the Applicant, is nevertheless a product. In that sense as a product, electricity is in my view no less an article than say, air. In *Granada TV Network Ltd v Kerridge (Valuation Officer)*, Knight's Local Government and Magisterial Reports Vol LX1 p 332, 1963, Lord Denning MR said at p 334:
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> > '… I can well see that water is an article, at any rate when it is confined in a pipe, but I doubt whether water is an article when it is flowing in a river. I can understand that gas is an article when it is confined in a container, but I should doubt whether gas escaping into a room was an article ...'
>
> The electricity generated by the Applicant on the holding is not released at large as various forms of radiant and electrical energy in nature, but is confined along cables and delivered to consumers, large and small. In that sense it is in my view an

'article' that is made by the Applicant on the holding. The LGA after all is legislation dealing with local authorities and its use of the term 'article' is a wide and general description of the work activities on holdings within a local authorities' area and cannot be expected to provide an exhaustive and detailed description of each of all of the products of the diverse production activities found in this day and age.

[13] We agree with the learned judge's ruling and for the reasons stated by us, our answer to question (a) is in the affirmative.

[14] In view of our answer to question (a), for the sake of completeness, we need to consider whether the amendment to the definition of 'electricity' by the Electricity Supply (Amendment) Act 2001 which came into force on 2 January 2002 alters the position in the valuation of power station like the one belonging to the respondent, *vis-a-vis*, the meaning of 'electricity' as an article?

[15] Learned counsel for the appellant submitted that according to s 2 of the Electricity Supply Act 1990 'electricity', unless otherwise defined, is an article as provided for under s 3 of the Factories and Machinery Act 1967, which in turn defines 'article' as any solid, liquid or gas or any combination thereof, and also includes electricity. However, learned counsel for the appellant submitted that the Electricity Supply (Amendment) Act 2001 amended s 2 of the Electricity Supply Act 1990 by substituting the definition of 'electricity' to mean electrical energy or electrical power when generated, produced, transmitted, distributed, supplied or utilised for any purpose except for the transmission of any communication or signal and hence by the amendment the word 'article' in the substituted definition of 'electricity' had been deleted and therefore electricity is no longer intended to be considered as an article.

[16] Learned counsel for the respondent, on the other hand, contended that the amendment to the definition of 'electricity' in the Electricity Supply Act 1990 by the Electricity Supply (Amendment) Act 2001 has not repealed the definition of 'electricity' but merely amended the definition of 'electricity' to be more technical so as to follow the technical definition of 'electricity' in the Energy Commission Act 2001. The amendment, it was submitted, is to preserve and synchronize the technical objectives of the Electricity Supply Act 1990 and the Energy Commission Act 2001, legislations dealing specifically with the generation, distribution and supply of electricity and energy and their control thereof. It was therefore submitted that the intention of the legislature in amending the definition of 'electricity' is in line with the definition of 'electricity' in the Energy Commission Act 2001. In fact the wordings in both legislations are identical.

[17] Be that as it may, does the amendment to the definition of 'electricity' by the Electricity Supply (Amendment) Act 2001 remove the reference to 'electricity' as an 'article' in the Factories and Machinery Act 1967? The

definition of 'article' to include electricity in s 3 of the Factories and Machinery Act 1967 remain intact. It follows therefore that the amendment to the definition of 'electricity' as an article in the Electricity Supply Act 2001 would have no bearing on the continuing definition of 'electricity' as an article in the Factories and Machinery Act 1967. Electricity as an article stands on its own and has not been amended and continued in force.

[18] Learned counsel for the respondent further submitted that the Factories and Machinery Act 1967 would be the most relevant legislation in relation to 'machinery and production therefrom' within the context of proviso (b) in the definition of 'annual value' in s 2 of the LGA in respect of the word 'article' in items (i), (ii) and (iii). It is the governing legislation and the licensing authority for all production machinery in the country as opposed to the Electricity Supply Act 1990 and the Energy Commission Act 2001 dealing specifically with the generation, distribution and supply of energy. We agree that the object of the Factories and Machinery Act 1967 is definitely different to that of the Electricity Supply Act 1990 and the Energy Commission Act 2001 in so far as it is the governing legislation and the licensing authority for all machinery in the country. It is clear to us that the use of the machinery in the operation of the power station is subject to the regulatory powers of the Factories and Machinery Act 1967 and machinery installed in the power station is subject to licensing under it without which it would be unlawful to operate such machinery. In other words, the power station for all intent and purpose can be considered as a factory for the production of an article, that is, electricity just like any other manufacturing plants or factories that manufacture goods or articles. The article, that is, electricity is for sale to the consumers, large and small and therefore the respondent to that extent is involved in commercial/business activity peculiar in its own way.

[19] Learned counsel for the respondent cited two cases, one from the Federal Court of Canada, Court of Appeal, Vancouver , that is, *Canadian Wirevision Ltd v The Queen* (1979) 2 FC 164 and the other from the Supreme Court of Victoria-Commercial and Equity Division 2003 VSC 453 (Victorian Unreported Judgments) is *AGL Victoria Pty Ltd v Lockwood*.

[20] In respect of *Canadian Wirevision Ltd*, the case no doubt is in respect of an income tax matter. The headnote reads:

> This is an appeal from a judgment of the Trial Division dismissing appellant's appeal from its income tax assessment for the 1974 taxation year and holding in effect that the appellant was not, during that year, involved in the manufacturing or processing of goods so as to be entitled to the tax reduction provided for in section 125.1 of the Income Tax Act. The appellant is a cablevision company. The Trial Judge rejected its contention that radio and television signals received by the appellant and transmitted to subscribers' receiver sets by coaxial cable, were 'goods' sold to its customers in the normal operation of its business.

Held, the appeal is dismissed. The word 'goods' in section 125.1 'is used in the common parlance of merchandise or wares, or to put it in legal jargon, tangible moveable property'. In that sense, the signals captured by the appellant are not goods. Further, the appellant would not succeed even if that conclusion were wrong because the record does not show that it ever sold signals to its subscribers. Whatever be the technology of cablevision, the only realistic view of the appellant's activities is that of a mere carrier providing its subscribers with the technical means of obtaining a better reception of radio and television signals. The appellant is in the communication business, it is not in business of selling goods.

[21] Pratte J in the judgment at p 32 concluded:

… the signals captured by the appellant, in my view, are not goods. True, electricity is often referred to as a commodity and even, sometimes as 'goods'. However, the electricity that is commonly purchased and sold and referred to as an article of trade is the electricity that is produced, sold and used for its energetic properties. By contrast, radio and television signals, while electrical currents, are never referred to as 'goods'.

[22] The obiter of Pratte J would appear to support the definition of 'electricity' which excepted the transmission of any communication or signal.

[23] The case of *AGL Victoria Pty Ltd v Lockwood* (Supreme Court of Victoria) relates to the meaning of 'electricity' supplied to a company under receivership. One of the issues before the court was whether electricity and electrical power goods can be regarded as purchase under s 419(1) of the Corporations Act. The Supreme Court of Victoria in *AGL Victoria Pty Ltd* quoted with approval the decision of the Federal Court in *State of Electricity Commission of Victoria (SECV) v Federal Commissioner of Taxation* (Carr J dissented on factual aspect of this passage) in which SECV sought a declaration that certain transformers used in electricity distribution were exempt from sales tax. Upon appeal to the Full Federal Court counsel for the commissioner conceded before the court that electricity and electrical power were goods as defined in the sales tax legislation of that country. The majority said this:

(1) … Clearly electrical power is something subject to the dominion of United. It can be transported from place to place. It can be bought and sold …

(2) … Energy is a function of power over time. That is the 'commodity of commerce' which is bought and sold. The commodity is electrical energy, rather than electric current having a particular voltage. On this view, a change in current or voltage does not result in the manufacture or production of a different commodity or different goods.

(3) … electrical energy can be bought and sold, as such, in a quantifiable amount or by the piece. A consumer purchases and consumes energy by turning on a switch and subsequently turning it off.

[24] Though the facts and the legislations in the two cases cited above may be different but the common issue is that electricity or electrical energy has been held as goods which bear the same meaning as articles and would lend support to the interpretation of 'electricity' as an article in the context used in the LGA.

[25] In the circumstances, our answer to question (a) would still be the same, that is, in the affirmative.

QUESTION (B)

[26] As are have ruled that electricity is an article in the context of proviso (b) to the definition of 'annual value' in the LGA, the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration for the purpose of estimating the annual value of any holding must necessarily refer to such machinery used for all or any of the purposes enumerated in items (i), (ii) and (iii) in the said proviso (b). This is what the learned judge said at p 6 of his judgment:

> 8 Firstly, the proviso exempts machinery used for the making of any article or part of an article, the altering, repairing, ornamenting or finishing of any article or for the adapting for sale (hereinafter referred to as 'article production machinery') of any article. The enhanced value of the holding from the presence of 'article production machinery' is not taken into consideration for the calculation of rates. The fact of the exemption being made implies that except for the machinery being exempted, all other machinery are included into the value of the land and building, and to that extent regarded as part of the land or building as the case may be.

[27] Learned counsel for the appellant submitted that 'machinery' in proviso (b) in the definition 'annual value' refers to machinery that is not integrated with the land and/or building, but are on the land and enhances the value of the land.

[28] It support thereof, it was submitted that the plant and machinery in SJSP come within the definition of 'building' and is part of the holding as defined and referred to the definition of 'building' in s 2 of the LGA.

[29] In response to that, the learned judge stated at pp 12–15 thus:

> 20 One would note firstly that nothing in the proviso (b) to the definition of 'annual value' suggests directly that any machinery could be a 'building'. Even so, the definition of 'building' lists items that are in the nature of structure, support or foundation that are essentially immoveable, and consistent with the notion of structure, support or foundation that are either provided by a landlord to a tenant, or, even if put up by a tenant, is generally expected to be left behind by a tenant upon leaving.
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> 21 As mentioned in paragraph 8 above, the exemption only of 'article production machinery' and extension of the meaning of such machinery to steam engines,

boilers or other motive power belonging to such machinery to be excluded from the computation of annual value, leads me to the conclusion that all other machinery are intended to be included in the meaning of land and buildings where they are attached to such land and buildings. The term 'other motive power' is wide enough to encompass other motive power relying on fuels, electricity, heat, or other sources of energy such as steam, wind, wave motion or flowing water. A steam driven turbine is clearly as much a steam engine as the old steam driven piston engine on say a steam engine locomotive. Thus if electricity is an article, then steam engines, boilers or other motive power belonging to the direct machinery for the production of electricity are also excluded. Thus the alternators that produce electricity, and the turbines or steam engines, boilers or other motive power to the alternators are exempted from the computation of annual value for the purpose of rates.

22 But the annual value of machinery and all other things so attached to the land or building other than 'article production machinery' and steam engines, boilers or other motive power belonging to the direct machinery for the production of electricity are rateable. This would include the annual value of all administration, guardhouse, recreational and other buildings, transmission facilities, fuel pipelines, tanks etc. It would also include all land, which term includes all things attached to the earth or permanently fastened to anything attached to the earth and not otherwise excluded.

23 The conclusion must be that the annual value of the power generation units that directly produce the product 'electricity', including steam engines, boilers and other motive power belonging to the power generation units are *not* to be included in the computation of annual value for the levy of rates.

24 For clarity, the annual value of the holding in this case would comprise a) the value of the land, and b) buildings (if any) thereon, which term i) includes any house, hut, shed or roofed enclosure, whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, underground tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty. Landing-stage, swimming pool, bridge, railway lines, transmission lines, cables, redifussion lines, overhead or underground pipelines, or any other structure, support or foundation; and ii) excludes machinery for the production of electricity, and the steam engines, boilers or other motive power belonging to such machinery.

[30] From the finding of the learned judge we can conclude that the machinery referred to in proviso (b) refers to 'article production machinery' that are not integrated with the 'land' and/or 'building'. The intention of the legislature in proviso (b) is to apply to all machinery in the production of articles or goods just like the function of SJPJ, that is, to produce electricity for sale to the consumers, large and small.

[31] We were advised that proviso (b) was applied in the valuation of the holding in respect of manufacturing plants and factories within the local authority area of the appellant and we see no reason why it should not be

applicable to the respondent in this case. Rating has to be fair and equitable and the burden of rates should not be heavier on one party than on another (see the comparison at pp 449–450 of the appeal record). The respondent submitted that the power station are actually not integrated, ie the machinery with the land and buildings. In fact the machinery in a power station is removable just like any other machinery of the manufacturing plant or factories (see pp 578–579 of the appeal record). There is no evidence shown to the contrary by the appellant.

[32] Reference to *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Company Limited* (1949) Vol 1 KB 385 by learned counsel for the appellant is of no help to the appellant's case as it concerned the interpretation of Class 4 of the schedule to the Plant and Machinery (Valuation for Rating) Order 1927, that is, whether a machinery was rateable or not. The situation in England is different from that in Malaysia. The rating provision in the Rating and Valuation Act 1925 and the Plant and Machinery (Valuation for Rating) Order 1927 are different from the provisions in the LGA.

[33] Similarly, references to *The Tyne Boiler Works Company, Appellants v The Overseers of The Parish of Longbenton and the Assessment Committee of The Tynemouth Union, Respondents* (1886) 18 LR (QBD) 81; *Kirby v Hunslet Union Assessment Committee* (1906) AC 43; *Laing, Appellant; the Overseers of the Township of Bishopwearmouth and The Assessment Committee of Sunderland Union, Respondents* (1878) Vol 3 LR (QBD) 299 by learned counsel for the appellant are of no assistance either as the present rating law in Malaysia on the question of the rateability on machinery is based on the direct express provision of the LGA as in proviso (b) to s 2 in respect of the definition of 'annual value'.

[34] In that event, we would answer question (b) in the affirmative.

QUESTION (C)

[35] In view of our answer to question (a) that electricity is an article within the context of the said proviso (b), the question of the generating plant and machinery present in a power station are 'structures' within the definition of 'building' in s 2 of the LGA and are to be taken into account in determining the annual value of SJSP does not arise and it is not relevant for our consideration. The key issue here is that any machinery used for all or any of the purposes enumerated in items (i), (ii) and (iii) relating to any article (which we say includes electricity), the presence of such machinery which relates to 'article production machinery', the enhanced value of the holding from the presence of such 'article production machinery' which may include generating plant and machinery shall not be taken into account in estimating the annual value of the holding of the respondent.

[36] In the circumstances, the matter of we answering question (c) does not arise. This is in line with the appeal to this court in respect of such part of the judgment of the High Court as set out in the early part of this judgment wherein question (c) is not in respect of part of such judgment appealed from.

[37] For the reasons stated, we dismiss the appeal with costs. The deposit is to go towards the account of taxed costs of the respondent.

Appeal dismissed with costs.

Reported by Sugandra Rao